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**United States District Court
for the Southern District of Nevada**

ANITA MAZER

Agency File No.: A77 133 799
Application No.: WSC*001034935
Plaintiff,

v.

MICHAEL CHERTOFF, Secretary of
Department of Homeland Security;
EMILIO T. GONZALES, Director of U.S.
Citizenship and Immigration Services;
LOLA PAROCUA, Field Office Director,
USCIS Las Vegas Field Office;
STEPHEN GREEN, Supervisory
Adjudications Officer, USCIS Las Vegas;
ROBERT MUELLER, Director of Federal
Bureau of Investigations;
Defendants.

Case No.:2:07-cv-01471

**PETITION FOR HEARING ON A
NATURALIZATION
APPLICATION PURSUANT TO
8 U.S.C. §1447(b) AND PETITION
FOR WRIT IN THE NATURE OF
MANDAMUS**

I. INTRODUCTION

1. This is an action for a Judicial Hearing in connection with Plaintiff's
naturalization application, pursuant to 8 USC §1447(b), and a Petition for Writ in the
Nature of Mandamus requiring the Department of Homeland Security and the Federal
Bureau of Investigation to complete the name check and background clearance
necessary for naturalization

1 2. All of the foregoing claims are based on the unlawful agency action of refusing
2 to process and adjudicate the N-400 Application for Naturalization of the Plaintiff.

3 3. Plaintiff Anita MAZER is suing Defendants in his individual capacity as an
4 applicant for an immigration benefit.

5 4. As a result of the actions of each of the aforementioned Defendants, Plaintiff
6 suffered a legal wrong and is adversely affected within the meaning of the Immigration
7 and Nationality Act (hereinafter "INA").

II. JURISDICTION AND VENUE

10 5. This court has jurisdiction of this action pursuant to 8 USC §1447(b), and 28 USC
11 §1331 and 1361, as well as 5 USC §§555, §701 et seq. Relief is requested pursuant to said
12 statutes. This action is timely under 28 USC §2401. Furthermore, the Ninth Circuit
13 Court of Appeals has held that, once suit is filed under 8 U.S.C. §1447(b), the district
14 court assumes exclusive jurisdiction over the naturalization application. *See United*
15 *States v. Hovsepian*, 359 F.3d 1144 (9th Cir. 2004) (en banc). In reaching this conclusion,
16 the Court considered the plain language of § 1447(b), the larger statutory context, and
17 Congress' policy objectives.

18 6. Venue is proper under 8 USC §1447(b), and 28 USC §1391(a) in that Plaintiff
19 resides in this district.

III PARTIES

21 7. Plaintiff, Anita MAZER ("MAZER" or "Plaintiff" hereinafter), is a resident of
22 Clark County, Nevada. She filed an N-400 application under 8 USC §1427 seeking to

1 be naturalized as a United States citizen on October 14, 2003. She was interviewed on
2 her application pursuant to 8 USC §1446 on July 20, 2004. (*see exhibit 1*) More than 120
3 days have passed since the interview. To date, the Department of Homeland Security
4 has failed to make a determination regarding this N-400 application. Furthermore, the
5 Federal Bureau of Investigation has failed to complete the name check and background
6 clearance necessary for naturalization.

7 8. Department of Homeland Security ("DHS" hereafter) is a federal agency
8 responsible for administering the laws of Congress as to the adjudication of applications
9 for naturalization (N-400) under the INA.

10 9. Within the DHS, United States Citizenship and Immigration Services
11 (hereinafter "CIS") is directly responsible for adjudication of all N-400 applications.

12 10. Defendant MICHAEL CHERTOFF (hereinafter "CHERTOFF"), is the Secretary
13 of DHS and is a federal agent acting within the parameters of his authority as the
14 ultimate decision maker and administrator of all DHS operations. In his official
15 capacity, CHERTOFF oversees CIS and is responsible for ensuring that N-400
16 applications are adjudicated according to law.

17 11. Defendant EMILIO T. GONZALES (hereinafter "GONZALES") is the Director of
18 CIS and is a federal agent acting within the parameters of his authority as the ultimate
19 decision maker and administrator of all CIS operations. In his official capacity
20 GONZALES oversees CIS and is responsible for ensuring that N-400 applications are
21 adjudicated according to law.

22 12. Defendant LOLA PAROCUA, (hereinafter "PAROCUA") is the Field Office

1 Director of the Las Vegas Office of CIS and is a federal agent acting within the
2 parameters of her authority as the ultimate decision maker and administrator of all CIS
3 operations within the Las Vegas Office. In her official capacity PAROCUA oversees CIS
4 within said Field Office and is responsible for ensuring that N-400 applications are
5 adjudicated according to law.

6 13. Defendant STEPHEN GREEN, (hereinafter "GREEN") is the Supervisory
7 Adjudications Officer at CIS Las Vegas. He is a federal agent acting within the
8 parameters of his authority as the supervisor for N-400 adjudications at the Las Vegas
9 Office. It is his duty to ensure that N-400 applications are adjudicated according to law.

10 14. Federal Bureau of Investigations (hereinafter "FBI") is a federal agency
11 responsible for administering the laws of Congress as to completing name checks and
12 background clearances necessary for naturalization. The FBI receives requests from CIS
13 to perform the said name and background checks and transmits its data to CIS which
14 then uses the data to adjudicate an N-400 application. If there is no derogatory data
15 from the FBI, and if all other issues attendant to the N-400 application have been
16 resolved in favor of the applicant, CIS then favorably adjudicates the N-400 and the
17 applicant is scheduled for a swearing-in ceremony.

18 15. Defendant ROBERT MUELLER (hereinafter "MUELLER"), is the Director of the
19 FBI and is a federal agent acting within the parameters of his authority as the ultimate
20 decision maker and administrator of all FBI operations. In his official capacity,
21 MUELLER oversees the FBI and is responsible for ensuring that the FBI promptly and
22 competently performs name and background checks and transmits their data to CIS.

IV. FIRST CAUSE OF ACTION
REQUEST FOR A HEARING PURSUANT TO 8 USC §1447(b)

16. Plaintiff re-alleges each and every one of the foregoing paragraphs 1-15, and incorporate the same as though fully set forth here.

17. MAZER was examined in connection with her N-400 application on July 20, 2004 in accordance with 8 U.S.C. §1446. Subsequent to the filing of her N-400 application but before the examination, the CIS conducted an investigation of the applicant including a fingerprint check. At the examination on July 20, 2004 the CIS officer notified MAZER in writing that she had passed but that final approval would be granted only after the FBI check.

18. More than 3 years have passed since Plaintiff's examination. To date, notwithstanding 8 C.F.R. 335.3(a), DHS has failed to make a determination regarding this N-400 applications.

19. Due to the failure on the part of DHS to make a determination under 8 U.S.C. 1446 [INA §335] within the period of time prescribed by law, MAZER requests a hearing on the matter before the Court in accordance with 8 U.S.C. 1447(b)

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V. SECOND CAUSE OF ACTION

COMPLAINT FOR WRIT IN THE NATURE OF MANDAMUS

20. Plaintiff re-alleges the foregoing paragraphs 1-19, and incorporates them here.

21. This action is brought against the Defendants to compel them to complete the necessary background checks for Plaintiff's N-400 applications and to grant it.

1 22. Plaintiff was examined in connection with her N-400 application more than
2 three years ago in accordance with 8 U.S.C. 1446. At this examination, the CIS officer
3 notified Plaintiff in writing that she had passed his N-400 interview, but that final
4 approval would be granted only after the FBI check which had not yet been completed.

5 23. Following the examination Plaintiff made several status inquiries of the
6 Citizenship and Immigration Service at their Las Vegas, Nevada office and via the CIS
7 customer service inquiry telephone line to no avail. (*see exhibit 2*) To date, no decision
8 on her N-400 applications has been forthcoming. Plaintiff has exhausted her
9 administrative remedies, having made numerous inquiries concerning the status of her
10 N-400 application, to no avail.

11 24. Plaintiff seeks to have the Court compel Defendants CHERTOFF, GONZALES,
12 OKIN, and PAROCUA to complete her N-400 application, and to compel MUELLER to
13 complete her name and background checks.

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1 VI. PRAYER

2 25. Plaintiff respectfully prays that Defendants be cited to appear herein, and that
3 upon due consideration, the Court enter an order:

4 (a) granting Plaintiff's application for citizenship,
5 administering the oath of allegiance to Plaintiff and directing the CIS to
6 issue a Certificate of Naturalization.

7 (b) or, alternatively, requiring Defendant MUELLER to
8 complete the name and background checks of Plaintiff forthwith, and
9 present them for the Court's consideration in the adjudication of
10 Plaintiff's application for citizenship.

11 (c) or, remanding with instructions requiring Defendants
12 DHS, CIS, CHERTOFF, GONZALES, and PAROCUA to complete
13 Plaintiff's N-400 application forthwith;

14 (d) awarding Plaintiff reasonable attorneys fees and costs;

15 (e) granting such other relief at law and in equity as justice
16 may require.

17 DATED this 2nd day of November, 2007.

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PETER L. ASHMAN, ESQ.
Attorney for Plaintiff

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EXHIBIT 1

3373 Pepper Lane
LV/NV 89120

A#: 77 133 799

On 7-20-64, you were interviewed by INS Officer _____

JOHN F. WILHELM, DAU

- You passed the tests of English and U.S. history and government.
- You passed the test of U.S. history and government and the English language requirement was waived.
- The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- You will be given another opportunity to be tested on your ability to _____ speak / _____ read / _____ write English.
- You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- Please follow the instructions on the Form N-14.
- INS will send you a written decision about your application.
- You did not pass the second and final test of your _____ English ability / _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) _____ A decision cannot yet be made about your application.

AWAITING
NAME
CHECK

8/18/05

It is very important that you:

- ✓ Notify INS if you change your address.
- ✓ Come to any scheduled interview.
- ✓ Submit all requested documents.
- ✓ Send any questions about this application in writing to the officer named above. Include your full name, A-number, and a copy of this paper.
- ✓ Go to any oath ceremony that you are scheduled to attend.
- ✓ Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath ceremony. Include a copy of this paper and a copy of the scheduling notice.

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EXHIBIT 2



Name: Anita N Mazer

Appointment Speak to immigration officer

Type:

Confirmation No.: LVG-05-23965

Authentication Code: 1605a

Appointment September 27,

Appointment Time: 2:50 PM

Date: 2005

Location: 3373 PEPPER LANE, Las Vegas, NV 89120; LOBBY

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- You must appear in person and bring photo identification along with this appointment letter.**
- Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)**
- In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.**

This is your Confirmation Number:



LVG-05-23965

If you wish to cancel this appointment, you will need the following Personal Identification Number:

55963



Name: Anita Nedeltcheva Mazer

Appointment Question about case

Type:

Confirmation No.: LVG-05-21789

Authentication Code: 1646f

Appointment August 31, 2005

Appointment Time: 2:35 PM

Date:

Location: 3373 PEPPER LANE, Las Vegas, NV 89120; LOBBY

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- You must appear in person and bring photo identification along with this appointment letter.
- Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)
- In order to serve you more efficiently, we require you to bring all applicable immigration forms, letters, receipts, translations and originals of supporting documents.

**This is your Confirmation
Number:**



LVG-05-21789

If you wish to cancel this appointment, you will need the following Personal Identification Number:

51064